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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider  
Regulating Telecommunications Services  
Used by Incarcerated People.

Rulemaking 20-10-002

**RESPONSE OF GLOBAL TEL\*LINK CORPORATION (U 5680 C) TO THE MOTION  
OF THE PRISON POLICY INITIATIVE, INC. TO COMPEL**

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March 29, 2021

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Pursuant to Rule 11.3(b) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”), Global Tel\*Link Corporation (“GTL”) hereby responds to the Motion of the Prison Policy Initiative, Inc. to Compel Global Tel\*Link to Respond to Data Requests (“Motion”), filed on March 18, 2021. As shown herein, Prison Policy Initiative, Inc. (“PPI”) has failed to reveal a cognizable basis upon which the Motion should be granted, warranting its denial.

**I. PPI HAS FAILED TO JUSTIFY THE NEED FOR GTL TO PRODUCE  
PAYMENT-PROCESSING INFORMATION**

Rule 10.1, in pertinent part, limits discovery to matters “relevant to the subject matter involved in the pending proceeding” and, in cases where a “matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence,” forestalls discovery where its “burden, expense, or intrusiveness . . . clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.” As shown herein, the Motion seeks to compel discovery that runs afoul of these restrictions.

PPI demands that GTL produce “[a]ll contracts between GTL and any person that receives or processes payments from end-users on GTL’s behalf, includ[ing] contracts with

payment-card processors, acquiring banks, and money transmitters,” (Request 1) and with respect to each such contract, “all documents showing any compensation collected within the last 24 months by the contractual counter-party, whether such compensation was paid directly by GTL or deducted from end-user funds” (Request 2). *See* Declaration of Stephen A. Raher (“Raher Decl.”) ¶ 4 and Exh. 1 at 3.

The Motion predicates these demands on its claim that “the Commission has ample authority to regulate ancillary fees associated with ICS carriers’ California operations.” Motion at 4. Yet PPI fails to explain how the “burden, expense, and intrusiveness” of producing voluminous information concerning parties outside the scope of this proceeding, which impose financial charges over which GTL has no control, is commensurate with the likely discovery of admissible evidence.

As a basic matter, third-party financial institutions, such as those at issue in Requests 1 and 2, do not fall within the Commission’s jurisdiction over public utilities. The Commission has plenary authority over public utilities pursuant to the California Constitution, which establishes the Commission and subjects “[p]rivate corporations and persons that own, operate, control, or manage a line, plant, or system for the . . . transmission of telephone and telegraph messages” to its jurisdiction.”<sup>1</sup> Key to the implementing statutes in the California Public Utilities Code is the centrality of “communication by telephone,”<sup>2</sup> as provided through a “telephone line.”<sup>3</sup> While the Commission has limited jurisdiction over non-utility companies, this is only as specifically authorized by the legislature<sup>4</sup> and only to the extent that actions taken

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<sup>1</sup> Cal. Const., art. XII, §§ 1, 3.

<sup>2</sup> Cal. Pub. Util. Code § 233.

<sup>3</sup> Cal. Pub. Util. Code § 234(a).

<sup>4</sup> *See PG&E Corp. v. Public Utilities Commission*, 118 Cal. App. 4th 1174, 1197–98, 13 Cal. Rptr. 3d 630,

thereunder “are ‘cognate and germane’ to the Commission’s statutory authority over utility matters.”<sup>5</sup> Third-party financial institutions fall well outside the constitutional and statutory definition of a public utility, and PPI has provided no evidence or rationale by which such entities may be encompassed by the Commission’s limited jurisdiction over non-utility companies.<sup>6</sup>

PPI specifically asserts that the “costs of processing credit- and debit-card payments” are germane to the Scoping Memorandum’s inquiry into “the costs of the provision of inmate communication services, including the rates and ancillary or additional fees charged.”<sup>7</sup> Motion at 2-3. Yet Requests 1 and 2 – which seek the production of card-processing contracts between GTL and third-party financial institutions and documents reflecting compensation realized thereunder, regardless of whether they concern the inmate communication services (“ICS”) at issue in this matter<sup>8</sup> – are unsupported by this rationale. As the Federal Communications Commission (“FCC”) has recognized, ICS providers have, at best, “limited control over the fees

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647 (2004). *Cf.* Cal. Pub. Util. Code § 2889.9(a)-(b) (rendering non-utility companies that generate a charge on a subscriber’s bill amenable to the Commission’s limited jurisdiction for purposes of enforcement actions, in instances where such an entity “misrepresent[s] its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber’s agreement to purchase the products or services of the person or corporation.”)

<sup>5</sup> Rulemaking 14-08-020, *Order Instituting Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Award of Intervenor Compensation*, Decision 18-05-050 (May 31, 2018).

<sup>6</sup> *See* Cal. Const., art. XII, § 5. *Cf.* Application No. 55492, *Pacific Telephone and Telegraph Co.*, Decision No. 88232 (Dec. 13, 1977) (“This Commission has no jurisdiction whatsoever over banks, savings and loan companies, and retail establishments which are likely possibilities for pay agencies. Any order on our part specifically directing Pacific to establish a pay agency at a given location would be unenforceable without the voluntary cooperation of persons not subject to our jurisdiction, and might only make such persons or organizations suspicious of bureaucratic encroachment.”).

<sup>7</sup> Rulemaking 20-10-002, *Assigned Commissioner’s Scoping Memo and Ruling* (Jan. 12, 2021) (“Scoping Memorandum”).

<sup>8</sup> *See* Scoping Order at 23. GTL provides a variety of products and services to end users, via its correctional facility customers, that fall outside the scope of ICS. *See generally* GTL, Solutions, <https://www.gtl.net/correctional-facility-services/> (2021).

established by third parties, such as Western Union or credit card companies, for payment processing functions.”<sup>9</sup> In establishing the requirement that ICS providers pass through the exact third-party financial service fees to end users for third-party financial transaction and single-call ancillary services,<sup>10</sup> the FCC disclaimed any cost-based rationale for ICS providers to assess them with a markup.<sup>11</sup> Given this, PPI’s reference to costs as a rationale for Requests 1 and 2 is wholly misplaced; these data requests seek information on a charge established and imposed by a third-party outside the scope of the Commission’s proceeding, a topic of inquiry well removed from the realm of admissible evidence in this proceeding.

Relatedly, PPI claims that based upon the February 26, 2021 telephonic conference between the parties – *see* Declaration of Matthew L. Conaty (“Conaty Decl.”) ¶ 8; Raher Decl. ¶ 7 – “it appears that GTL’s only real objection to Requests 1 and 2 is that the company believes the Commission lacks jurisdiction to regulate ancillary fees.” Motion at 3. PPI is incorrect. GTL has, in fact, maintained that the phrasing of Request 1 (specifically, its reference to “any person”) contemplates the production of contracts between GTL and entities that do not serve end users in the State of California, in contravention to the Scoping Memorandum. GTL has also maintained that Request 2 (specifically, its reference to “all documents” and “any compensation”) is facially overbroad, compelling GTL to search each and every document within its possession, custody, and control for each and every reference to or demonstration of the “compensation” for the past 24 months, with no geographical limitation.<sup>12</sup> Unless and until

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<sup>9</sup> *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763, ¶ 171 (2015) (“2015 ICS Order”).

<sup>10</sup> *See* 47 CFR § 64.6020(b)(2), (5).

<sup>11</sup> *See 2015 ICS Order*, ¶¶ 171, 186 (“Providers have offered no cost-based justification for imposing an additional fee on end users on top of the third-party money-transfer service or financial institution fee.”).

<sup>12</sup> GTL serves approximately 2,300 correctional facilities and 1.8 million inmates in 50 states, the District of Columbia and Puerto Rico. To this end, PPI’s Proposed Order is wholly unreasonable, affording GTL only three

PPI can address these outstanding objections, the Motion should be denied as clearly violative of Rule 10.1.<sup>13</sup>

## **II. PPI ENTERED INTO A CONTRACTUALLY BINDING NON-DISCLOSURE AGREEMENT WITH GTL AFTER EXTENSIVE GOOD-FAITH NEGOTIATIONS, PRECLUDING PPI’S ATTEMPTS TO REWRITE IT**

PPI asserts, on the one hand, that it “has no problem complying with procedures that are designed to protect GTL’s *bona fide* confidential and proprietary information,” yet now claims, on the other, that it should be excused from complying with portions of an equally *bona fide* and contractually binding Non-Disclosure and Use of Information Agreement (“Agreement”) that is in force between the parties. Motion at 5. PPI cites “further research” as grounds for expunging Paragraph 6 of the Agreement – captioned “Obligation of the Receiving Party with Respect to Existing Protective Orders” – which it now deems to be “untenable” and “unreasonable.” Motion at 4-5; *see* Conaty Decl. ¶ 9, Exhibit 3 at 3. This is patently irrational and disingenuous, given the lengthy course of negotiations between the parties and PPI’s failure to evince any legally cognizable basis on which the Agreement should be rescinded.

Rule 11.3(a) emphasizes the importance of good faith efforts of parties to resolve discovery disputes between them. In this vein, this Commission has repeatedly recognized the proprietary and utility of non-disclosure agreements in the discovery process.<sup>14</sup> In accordance

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business days to complete and produce a company-wide search of correspondence, accounting, and operational materials.

<sup>13</sup> Cf. Cal. Civ. Proc. Code § 2017.020(a).

<sup>14</sup> See, e.g., Rulemaking 20-05-003, *Order Instituting Rulemaking to Continue Electric Integrated Resource Planning and Related Procurement Processes*, Decision 21-02-008 (Feb. 11, 2021) (“Because the data requirements specified in both filings contain confidential information, the CPUC expects the [California Independent System Operator] and the [Investor-Owned Utilities] to exchange data using their own non-disclosure agreements.”); Application 20-04-014, *Application of SAN DIEGO GAS & ELECTRIC COMPANY (U 902-E) for Approval of its 2021 Electric Procurement Revenue Requirement Forecasts and GHG-Related Forecasts*, Decision 21-01-017 (Jan. 14, 2021) (“Granting independent consultants access to confidential, market-sensitive information under an

with these precepts, GTL engaged PPI in a comprehensive process to address its objections to the production of information deemed proprietary and protected under California law through the negotiation of a non-disclosure agreement.

On February 23, 2021, at the behest of PPI, GTL provided it with a proposed Agreement governing the production of “Confidential Information” between the parties in the instant proceeding. Conaty Decl. ¶ 6; *see* Raher Decl. ¶¶ 11-12. The proposed Agreement also contained a paragraph captioned “Obligation of the Receiving Party with Respect to Existing Protective Orders,” which expressly stated the parties’ acknowledgement and agreement that no information, documents, or data subject to the FCC Protective Order would be produced unless and until PPI completed the requirements delineated by Paragraph 5 of the FCC Protective Order. Conaty Decl. ¶ 6, Exhibit 1 at 1, 3.

On February 24, 2021, PPI sent to GTL via electronic mail a copy of the Agreement containing PPI’s proposed edits in redline form. No changes were proposed to the paragraph captioned “Obligation of the Receiving Party with Respect to Existing Protective Orders” (save to renumber it). Conaty Decl. ¶ 7.

On February 26, 2021, GTL sent to PPI via electronic mail a revised Agreement incorporating and addressing PPI’s proposed edits, pursuant to a telephonic conference between counsel for the parties concerning GTL’s objections to the First Data Request held on the same day. Conaty Decl. ¶ 8, Exhibit 2; Raher Decl. ¶ 7. This revised Agreement included a definition of “Confidential Information” that encompassed, in pertinent part, “any information, documents, or data that has been accorded confidential treatment in other regulatory proceedings.” Conaty

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appropriate non-disclosure agreement is a reasonable means of allowing market participants to review confidential versions of [Energy Resource Recovery Account]/[Portfolio Allocation Balancing Account]/[PCIA Undercollection Balancing Account] reports.”);



Decl. ¶ 8, Exhibit 2 at 1. On the same day, PPI sent to GTL via electronic mail a document containing PPI's further proposed edits to the Agreement. Again, no changes were proposed to either GTL's proposed definition of "Confidential Information" or the paragraph captioned "Obligation of the Receiving Party with Respect to Existing Protective Orders." Conaty Decl. ¶ 8.

On March 3, 2021, GTL and PPI executed the Agreement, which "govern[s] access to and the use of all Confidential Information" by the parties in this proceeding. Conaty Decl. ¶ 9, Exhibit 3 at 1, 3; Raher Decl. ¶ 8. No substantive changes were made to the paragraph captioned "Obligation of the Receiving Party with Respect to Existing Protective Orders" from the first draft of the Agreement, dated February 23, 2021, to the executed version. *See* Conaty Decl. ¶¶ 6-9, Exhibits 1-3.

In sum, PPI had ample opportunity to perform the "further research" to which it now refers – Motion at 5 – and thereby negotiate or outright reject those provisions of the Agreement referring to its compliance with existing protective orders. Despite repeatedly engaging in fulsome edits to other portions of the Agreement, it opted not to do so. Indeed, PPI's after-the-fact attempts to rewrite a contractual arrangement between the parties, pursuant to its claim that terms therein are somehow "unreasonable," bespeaks a course of behavior squarely at odds with its insistence that it conferred with GTL on a good faith basis. In any case, PPI has revealed no legal theory under which rescission of the Agreement is warranted,<sup>15</sup> offering instead a *cri de coeur* that compliance with the Agreement would hinder it in "preparing for briefing and hearings in this California proceeding." Motion at 5. The Commission should not permit PPI to evade its responsibilities under the Agreement – and impugn the well-established process for

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<sup>15</sup> Cf. Cal. Civ. Code § 1689 (delineating cases in which a party to a contract may unilaterally rescind it).

private resolution of discovery disputes – with post-hoc rationales for its failure to perform adequate diligence with respect to its terms.

### **III. PPI IS LEGALLY REQUIRED TO COMPLY WITH THOSE PROVISIONS OF THE AGREEMENT TO WHICH IT OBJECTS**

While GTL maintains that bedrock principles of contract law and good-faith negotiation wholly estop PPI’s attempts to rewrite portions of the Agreement, other provisions of law also preclude it from obtaining the relief it seeks.

The disputed portion of the Agreement concerns PPI’s compliance with a protective order issued in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*. This proceeding was opened by the FCC in 2012 as a means to “consider whether changes to [its] rules are necessary to ensure just and reasonable ICS rates for interstate, long distance calling at publicly- and privately-administered correctional facilities.”<sup>16</sup> It remains active to this day, with the release of the Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking on August 6, 2020.<sup>17</sup>

On December 19, 2013, the FCC’s Wireline Competition Bureau (“WCB”) released a Protective Order in WC Docket No. 12-375 to establish “procedures to provide limited access to proprietary or confidential information filed in this proceeding.”<sup>18</sup> Participants in the docket are required to execute the FCC Protective Order to obtain unredacted copies of documents that are classified as Confidential Information or Stamped Confidential Information, as those terms are defined therein.

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<sup>16</sup> *Rates for Interstate Inmate Calling Services*, 27 FCC Rcd 16629, ¶ 1 (2012).

<sup>17</sup> *Rates for Interstate Inmate Calling Services*, 35 FCC Rcd 8485 (2020).

<sup>18</sup> *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 16954, ¶ 1 (2013) (“FCC Protective Order”).

Attorneys and consultants for GTL executed the FCC Protective Order on December 19, 2013; October 29, 2014; January 4, 2016; August 4, 2016; July 28, 2020; and September 30, 2020.<sup>19</sup> As a signatory, GTL may only be compelled to disclose the unredacted versions of Confidential Information or Stamped Confidential Information pursuant to a subpoena or order from a court or a federal or state department or agency.<sup>20</sup> In all other cases, Paragraph 5 of the FCC Protective Order specifies that “[a]ny person” desiring access to Stamped Confidential Documents and Confidential Information filed by GTL must execute the Acknowledgement appended to the FCC Protective Order and submit it to WCB, which will resolve any objections thereto.<sup>21</sup> Pursuant to its February 3, 2021 First Data Request, PPI is plainly a “person” that has demanded access to Stamped Confidential Documents or Confidential Information – *see* Conaty Decl. ¶ 3; Raher Decl. ¶¶ 4-5 – compelling it to comply with Paragraph 5 of the FCC Protective Order. Were GTL to evade this process on the basis of PPI’s “suggest[ion] that the existing non-disclosure agreement it has executed with GTL is sufficient to protect GTL’s interests” – Motion at 5 – GTL could be met with “appropriate sanctions . . . including but not limited to suspension or disbarment of Counsel or Outside Consultants from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in

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<sup>19</sup> See WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Letter from Angela F. Collins, Counsel to Global Tel\*Link Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 14, 2014); Letter from Chérie R. Kiser, Counsel for Global Tel\*Link Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 29, 2014); Letter from Michael H. Kellogg, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 4, 2016); Letter from Angela F. Collins, Counsel to Global Tel\*Link Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 8, 2016); Letter from Angela F. Collins, Counsel to Global Tel\*Link Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 30, 2020); Letter from Angela F. Collins, Counsel to Global Tel\*Link Corporation, to Marlene H. Dortch, Secretary, Federal Communications Commission (Sept. 30, 2020).

<sup>20</sup> See FCC Protective Order ¶ 15.

<sup>21</sup> See FCC Protective Order ¶ 5.

this or any other Commission proceeding.”<sup>22</sup>

Moreover, the FCC Protective Order is incumbent specifically upon PPI. The text of the FCC Protective Order and the appended acknowledgement are framed in terms of a “Participant’s” access to Stamped Confidential Documents or Confidential Information filed in WC Docket No. 12-375.<sup>23</sup> “Participant” is defined by the Protective Order as “a person or entity that has filed, or has a good faith intention to file, material comments in this proceeding.”<sup>24</sup> This definition accords with FCC regulations, which cast “participants” in rulemaking dockets, such as WC Docket No. 12-375, as entities or individuals who have tendered comments within them.<sup>25</sup> Alongside other public interest groups, PPI has submitted numerous comments and pleadings throughout the pendency of WC Docket No. 12-375,<sup>26</sup> including several recent comments on proposed rulemaking initiatives in redacted form pursuant to the FCC Protective Order.<sup>27</sup> PPI has also made 17 filings in its sole and exclusive behalf, most recently on March 23, 2021.<sup>28</sup>

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<sup>22</sup> FCC Protective Order ¶ 16.

<sup>23</sup> See Protective Order ¶ 1, App. A (“I acknowledge specifically that my access to any information obtained as a result of the Protective Order is due solely to my capacity as Counsel or Outside Consultant to a Participant . . .”).

<sup>24</sup> Protective Order ¶ 2.

<sup>25</sup> See 47 CFR § 1.415 (“Interested persons” are deemed to “participate in [a] rulemaking process through submission of written data, views, or arguments, with or without opportunity to present the same orally in any manner”); cf. 47 CFR § 1.419(b) (providing that “members of the general public” may “participat[e] informally in a rulemaking proceeding may do so by submitting an original and one copy of their comments”).

<sup>26</sup> See, e.g., WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Opposition to Securus Technologies, Inc. Motion for Extension of Time (Mar. 28, 2017) (filing of The Wright Petitioners, Citizens United For Rehabilitation Of Errants, and Prison Policy Initiative); Comments of Martha Wright et al., The D.C. Prisoners’ Legal Services Project, Inc., Citizens United for Rehabilitation of Errants, Prison Policy Initiative, and The Campaign for Prison Phone Justice (Mar. 25, 2013).

<sup>27</sup> See WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Reply Comments of The Wright Petitioners, Benton Institute for Broadband & Society, Prison Policy Initiative, and Public Knowledge (Jan. 15, 2021); Comments of The Wright Petitioners, Prison Policy Initiative, and Public Knowledge (Nov. 23, 2020).

<sup>28</sup> See WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Letter from Stephen Raher, Pro Bono Counsel, Prison Policy Initiative, to Marlene Dortch, Secretary, Federal Communications Commission (Mar. 23, 2021); Letter from Andrea Fenster, Staff Attorney, Prison Policy Initiative, to Marlene Dortch, Secretary,

Given this history, PPI is manifestly a “participant” in WC Docket No. 12-375, familiar with and subject to the restrictions and limitations imposed by the FCC Protective Order. Granting the Motion to excuse PPI from these clearly delineated responsibilities would constitute an unlawful end-run around them, permitting any similarly situated party to the FCC proceeding to gain access to confidential and proprietary materials by engaging in state-level discovery. The Commission cannot allow PPI to circumvent the clear dictates of a federal order – and render GTL potentially liable for financial and professional sanctions for complying with it – based on PPI’s “suggestion” that it does not apply to this proceeding. Motion at 5.

GTL has produced to PPI redacted versions of the documents subject to the FCC Protective Order that fall within the ambit of the First Data Request, Conaty Decl. ¶ 10, and PPI

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Federal Communications Commission (Mar. 23, 2021); Letter from Andrea Fenster, Staff Attorney, Prison Policy Initiative, to Marlene Dortch, Secretary, Federal Communications Commission (Feb. 25, 2021); Letter from Stephen Raher, Esq., Pro Bono Legal Analyst, Prison Policy Initiative, to Marlene Dortch, Secretary, Federal Communications Commission (Feb. 8, 2016); Letter from Peter Wagner, Executive Director, and Aleks Kajstura, Legal Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 12, 2015) (setting forth “Comments re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call programs”); Letter from Peter Wagner, Executive Director, and Aleks Kajstura, Legal Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 12, 2015) (setting forth “Comments re Second Further Notice of Proposed Rulemaking ¶¶ 5-6, 47-48, intrastate phone call regulation”); Letter from Peter Wagner, Executive Director, and Aleks Kajstura, Legal Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 12, 2015) (regarding “WC-12-375, paras 145-151 Advanced Inmate Communications Services”); Letter from Peter Wagner, Executive Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 10, 2014); Letter from Leah Sakala, Senior Policy Analyst, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (June 20, 2014); Letter from Peter Wagner, Executive Director, and Aleks Kajstura, Legal Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 13, 2014) (regarding “third-party payment services”); Letter from Peter Wagner, Executive Director, and Aleks Kajstura, Legal Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 13, 2014) (regarding questions to “distinguish between different correctional facilities by size or by purpose”); Letter from Leah Sakala, Senior Policy Analyst, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Jan. 8, 2014); Letter from Peter Wagner, Executive Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 1, 2013); Letter from Peter Wagner, Executive Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (Aug. 1, 2013) (regarding “comprehensive view of the commission system”); Letter from Peter Wagner, Executive Director, Prison Policy Initiative, and Gyepi Sam, Software Developer, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 17, 2013); Letter from Peter Wagner, Executive Director, Prison Policy Initiative, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 17, 2013); Letter from Peter Wagner, Executive Director, Prison Policy Initiative, and Gyepi Sam, Software Developer, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 5, 2013).

has the means to obtain the unredacted versions through compliance with the FCC protective order.<sup>29</sup> To the extent that the FCC Protective Order bars further use of these materials, the limitations of a federal regulatory proceeding in which PPI is an active participant and the Agreement, to which it knowingly and willingly subscribed, forestall the possibility of relief on these grounds before this Commission.

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<sup>29</sup> Cf. Investigation 00-11-001, *Order Instituting Investigation into implementation of Assembly Bill 970 regarding the identification of electric transmission and distribution constraints, actions to resolve those constraints, and related matters affecting the reliability of electric supply*, Decision 20-11-027 (Nov. 19, 2020) (exempting Pacific Gas and Electric Company (“PG&E”) from Commission requirements to submit quarterly reports concerning its transmission projects, given PG&E’s provision of publicly available reports on its website and the fact that “a confidential version is made available to parties that sign a non-disclosure agreement approved by [the Federal Energy Regulatory Commission]”)

#### IV. CONCLUSION

For the foregoing reasons, the Commission should deny PPI's Motion to Compel.

Respectfully submitted,

**GLOBAL TEL\*LINK CORPORATION**

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Used by Incarcerated People.

Rulemaking 20-10-002

**DECLARATION OF MATTHEW L. CONATY**

I, Matthew L. Conaty, declare as follows:

1. I am an attorney admitted in the State of New York. I am employed as Counsel by the law firm of Cahill Gordon & Reindel LLP, which represents Global Tel\*Link Corporation (“GTL”). I am over the age of eighteen, and I make the following declaration based on my own personal knowledge. If called upon to testify concerning the matters expressed herein, I could and would competently do so under oath.

2. I am coordinating GTL’s responses to and compliance with data requests issued in the above-captioned docket.

3. On February 3, 2021, Prison Policy Initiative, Inc. (“PPI”) served its First Data Request upon GTL pursuant to Rule 10.1 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure.

4. On February 12, 2021, GTL served its Statement of Specific and General Objections upon PPI arraying a series of objections to each of the six requests that constituted the First Data Request. GTL specified that it was willing to meet and confer on each such objection. With respect to objections concerning material that (1) qualifies as confidential and proprietary information under California law or (2) is subject, as Stamped Confidential Documents or



Confidential Information, to the February 19, 2013 Protective Order (as those terms are defined therein) promulgated by the Federal Communications Commission (“FCC”) in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services* (the “FCC Protective Order”), GTL conditioned them on execution of a comprehensive protective order under California law between and among the parties.

5. On February 17, 2021, Stephen Raher, Pro Bono Attorney for PPI, requested via electronic mail that GTL provide a proposed non-disclosure agreement and times to meet and confer regarding GTL’s objections.

6. On February 23, 2021, I sent via electronic mail to Mr. Raher a proposed Non-Disclosure and Use of Information Agreement (“Agreement”), a true and correct copy of which is attached hereto as Exhibit 1. Paragraph 6 of that proposed Agreement, entitled “Obligation of the Receiving Party with Respect to Existing Protective Orders,” stated the agreement and acknowledgement of the parties that no information, documents, or data constituting Stamped Confidential Documents or Confidential Information under the Protective Order issued by the FCC on December 19, 2013, in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, would be produced (1) unless PPI complied with the Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information, as set forth in Paragraph 5 of the FCC Protective Order, and (2) until the Wireline Competition Bureau (“WCB”) of the FCC resolved any objections resulting therefrom. *See* Exhibit 1 at 1, 3.

7. On February 24, 2021, Mr. Raher provided via electronic mail a copy of the Agreement containing PPI’s proposed edits in redline form. No changes were proposed to the aforementioned paragraph entitled “Obligation of the Receiving Party with Respect to Existing Protective Orders,” except to renumber it from Paragraph 6 to Paragraph 7.

8. On February 26, 2021, I sent a revised Agreement to Mr. Raher, incorporating and addressing PPI's proposed edits, a true and correct copy of which is attached hereto as Exhibit 2. The revised Agreement defined "Confidential Information" to include any information, documents, or data that has been accorded confidential treatment in other regulatory proceedings. *See Exhibit 2 at 1.* Later that day, Chérie R. Kiser, Partner at Cahill Gordon & Reindel LLP, and I met via telephone with Mr. Raher and PPI attorney Ginger Jackson-Gleich. Mr. Raher subsequently provided via electronic mail a document containing PPI's further proposed edits to the Agreement. No changes were proposed to the aforementioned definition of "Confidential Information." No changes were proposed to the aforementioned paragraph entitled "Obligation of the Receiving Party with Respect to Existing Protective Orders."

9. On March 3, 2021, the parties jointly executed the Agreement, a true and correct copy of which is attached hereto as Exhibit 3. The executed Agreement explicitly governs access to and the use of all Confidential Information by the parties in this proceeding. The executed Agreement defines "Confidential Information" to include any information, documents, or data that has been accorded confidential treatment in other regulatory proceedings. Paragraph 7 of the executed Agreement, entitled "Obligation of the Receiving Party with Respect to Existing Protective Orders," states the agreement and acknowledgement of the parties that no information, documents, or data constituting Stamped Confidential Documents or Confidential Information under the Protective Order issued by the FCC on December 19, 2013, in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, would be produced (1) unless PPI complied with the Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information, as set forth in Paragraph 5 of the FCC Protective Order, and (2) until the Wireline Competition Bureau ("WCB") of the FCC resolved any objections resulting

therefrom. *See* Exhibit 3 at 1, 3.

10. On March 8, 2021, I provided to PPI, via a secure electronic file sharing site, access to over 5,000 pages of documents responsive to the First Data Requests, including redacted and publicly accessible copies of documents that qualify as Stamped Confidential Documents or Confidential Information under the FCC Protective Order.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 29th day of March, 2021 at Washington, D.C.

*s/ Matthew L. Conaty*  
Matthew L. Conaty

## **EXHIBIT 1**

Global Tel Link Corporation's Proposed Non-Disclosure and Use of Information Agreement,  
dated February 23, 2021

## NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT

This Non-Disclosure and Use of Information Agreement (the “**Agreement**”), dated as of \_\_\_, 2021, is by and between **Global Tel\*Link Corporation**, an Idaho Corporation, on its own behalf and on behalf of all entities controlling, under common control with or controlled by it (“**GTL**”), and \_\_\_\_\_ (the “**Receiving Party**”) (each a “**Party**” and collectively herein referred to as the “**Parties**”)

### RECITALS

WHEREAS, pursuant to California Public Utilities Commission (“**CPUC**”) Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People*, the Receiving Party seeks production, exchange and discovery of documents and information that the Parties agree merit confidential treatment or have already been accorded confidential treatment in other regulatory proceedings; and

WHEREAS, the Receiving Party commits to protect, use, handle, and safeguard the Confidential Information it receives from GTL in accordance with the duties and responsibilities set forth herein, exercising the same degree of care as it would in protecting, using, handling, and safeguarding its own Confidential Information, but in no less than reasonable care.

### DEFINITIONS

“**Agreement**” as used herein means an arrangement between the Parties, a properly executed and legally binding contract. This Agreement shall not constitute, create or otherwise imply a joint venture, teaming or pooling agreement, partnership, or business combination or relationship of any kind. This Agreement is not intended to create any right in or obligation of any party or third party other than those expressly stated herein.

“**Confidential Information**” as used herein means proprietary or confidential information, intellectual property, trade secrets, know-how, software, technology, specifications, and non-public business or financial information, including information and materials concerning contractual negotiations, formation, and execution; vendor, customer, and employee data; any written materials marked as confidential or, in the case of oral communications, identified as confidential by oral declaration; and any other documents, information, or data that reasonably should be understood to be confidential. Confidential Information also means any third party’s information, documents, or data provided to GTL under obligation of confidentiality or information, documents, or data disclosed to a third party by GTL under obligation of confidentiality.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the Parties agree as follows:

1. **Purpose and Scope.** The purpose of this Agreement is to permit the Receiving Party to obtain and review Confidential Information solely in connection with the evidentiary discovery process set forth under CPUC Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People*. Nothing in this Agreement will or shall be construed to broaden GTL's responsibilities with respect to that process or limit its rights thereunder, including, without limitation, GTL's rights to object to information, document, or data requests propounded by the Receiving Party in accordance with applicable laws, regulations, and procedural rules, and GTL's ability to seek enforcement or redress of such rights before a court or tribunal of competent jurisdiction.
2. **Non-Disclosure.** The Receiving Party acknowledges and agrees to protect, use, handle, and safeguard the Confidential Information it receives from GTL in accordance with the duties and responsibilities set forth herein, exercising the same degree of care as it would in protecting, using, handling, and safeguarding its own Confidential Information, but no less than reasonable care, and at all times keep confidential the Confidential Information. The Receiving Party acknowledges and agrees that it shall use the Confidential Information only as required or permitted under this Agreement and, subject to Section 4 of this Agreement, will not disclose the Confidential Information, or permit anyone else to disclose it, except to those employees, affiliates, accountants, attorneys, and consultants who have a need to know; provided, that prior to disclosing the Confidential Information to any such employee, affiliate, accountant, attorney, or consultant of the terms and conditions of this Agreement, the Receiving Party will (i) inform them of the terms and conditions of this Agreement, and (ii) obtain their agreement to be bound by them.
3. **Ownership of Confidential Information.** All Confidential Information disclosed by GTL to the Receiving Party pursuant to this Agreement is and shall remain the exclusive property of GTL. Nothing in this Agreement will or shall be construed to grant the Receiving Party ownership of, a license for, or any other right to use the Confidential Information, except as expressly stated in this Agreement, and nothing in this Agreement will or shall be construed to operate as a waiver of GTL's rights in the Confidential Information.
4. **Exceptions to Non-Disclosure.** Confidential Information may be disclosed by the Receiving Party to a third party to the extent that such information:
  - (a) is or was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement, but only from the date that it becomes available to the general public; or
  - (b) was known by the Receiving Party at the time of disclosure without restrictions on its use, or was independently developed by the Receiving Party without

reliance on, use of, or guidance derived from the Confidential Information, each as shown by adequate documentation; or

- (c) subject to the provisions of Section 5, is used or disclosed pursuant to a statutory duty or an order, subpoena or other lawful process issued by a court, regulatory agency, or other governmental authority of competent jurisdiction under its independent authority.

5. **Notice of Pending Third-Party Disclosure.** If a court, regulatory agency, or other governmental authority of competent jurisdiction issues an order or subpoena under its independent authority for Confidential Information to the Receiving Party, or otherwise requests or requires under its independent authority the disclosure of Confidential Information by the Receiving Party (a “**Demand**”), the Receiving Party shall notify GTL of the Demand as soon as practicable, so as to facilitate GTL’s efforts to prevent such disclosure or otherwise preserve the confidentiality of the Confidential Information. A Party shall not be in violation of this Agreement if it complies with a Demand pursuant to this Section 5.

6. **Obligation of the Receiving Party with Respect to Existing Protective Orders.** With respect to a production request by the Receiving Party for information, documents, or data that constitute Stamped Confidential Documents or Confidential Information under the Protective Order issued by the Federal Communications Commission (the “**FCC**”) on December 19, 2013, in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services* (the “**FCC Protective Order**”), as those terms are defined therein, the Parties acknowledge and agree that no such information, documents, or data shall be produced under such request (i) unless the Receiving Party complies with the Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information set forth by the FCC Protective Order, including the execution and filing with the FCC’s Wireline Competition Bureau of the Acknowledgement of Confidentiality appended thereto, and (ii) until the FCC resolves objections, if any, arising from the Receiving Party’s compliance with the FCC Protective Order’s Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information, as detailed therein.

7. **Term.** This Agreement shall become effective on the date it is fully executed and shall continue in effect for two calendar years unless either Party unilaterally terminates this Agreement by providing thirty (30) days written notice to the other Party of an early termination. Termination shall not extinguish any claim, liability, or cause of action under this Agreement existing at the time of termination, including the rights and obligations set forth under Section 8, below. Termination shall not abrogate the Receiving Party’s obligations hereunder for Confidential Information received prior to the date of termination. The confidentiality and non-disclosure obligations of this Agreement are perpetual and survive expiration or termination of this Agreement.

8. **Return or Destruction of Confidential Information.** Upon termination of this Agreement, all Confidential Information shall, at GTL’s election, be returned to GTL or destroyed by the Receiving Party.

9. **Injunctive Relief.** The Parties acknowledge and agree that because (i) an award of

money damages is inadequate for any breach of this Agreement, and (ii) any breach causes GTL irreparable harm, for any violation or threatened violation of any provision of this Agreement, in addition to any remedy GTL may have at law, GTL is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages. Each Party acknowledges agrees that it shall bear all costs and expenses, including reasonable attorneys' fees that may be incurred by the other Party, pursuant to this Section 9.

**10. Authority.** The Parties agree that this Agreement binds the Receiving Party and each of its employees, agents, representatives, or any other individual who may have access to the Confidential Information. The Parties acknowledge that the individual signing on behalf of such Party has the authority to bind such Party as set forth in this Agreement.

**11. No Warranties or Representations.** Any Confidential Information disclosed under this Agreement carries no warranty or representation of any kind, either express or implied. The Receiving Party shall not use or rely upon the Confidential Information for any purpose other than to make its own evaluation thereof pursuant to the evidentiary discovery process set forth under CPUC Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People*.

**12. Notice.** Unless changed by a subsequent notice, all notices permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed via certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, and shall be deemed delivered on the date of hand delivery or the date shown on the delivery receipt to the other Party at the following addresses:

If to GTL: Chérie R. Kiser  
Matthew L. Conaty  
CAHILL GORDON & REINDEL LLP  
1990 K Street, N.W. Suite 950  
Washington, DC 20006

If to Receiving Party: [NAME]  
[ORGANIZATION]  
[ADDRESS]  
[CITY, STATE ZIP CODE]

**13. Miscellaneous.**

- (a) **Assignment.** This Agreement shall be binding upon the Parties, their successors, and assigns. Neither Party may assign this Agreement without the other Party's prior written consent.
- (b) **Governing Law.** The laws of the state of California, excluding its conflicts of law rules that would cause the application of the laws of another state, govern this Agreement.



- (c) **Waiver of Jury Trial.** Both GTL and the Receiving Party hereby waive their right to trial by jury in connection with any dispute related to this Agreement.
- (d) **Non-Waiver of Rights.** Any waiver of the provisions of this Agreement by a Party or its rights or remedies under this Agreement must be in writing. Any failure or delay in exercising any right under this Agreement shall not constitute a waiver of that right. Any waiver is solely for the circumstances giving rise to it and does not constitute a waiver for future situations.
- (e) **Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then each provision not so affected will be enforced to the extent permitted by law.
- (f) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior proposals, agreements, negotiations, correspondence and all other communications, whether written or oral, between GTL and the Receiving Party. No amendment or modification of any provision hereof shall be effective unless made in writing and signed by both GTL and the Receiving Party.
- (g) **Titles and Headings.** The topical headings of the sections and subsections contained in this Agreement are for convenience only and do not define, limit or construe the contents thereof or this Agreement.
- (h) **No Disclosure of Terms.** The terms of this Agreement are confidential, and Receiving Party shall not make public or otherwise disclose to the public, orally or in writing, the Parties' activities regarding this Agreement or its terms without the prior written consent of GTL.
- (h) **Counterparts, Facsimile.** This Agreement may be executed in counterparts, each of which may be delivered by facsimile and all of which shall be considered one and the same Agreement. A facsimile copy of the executed signature page shall have the same legal effect as an original

<Signatures on following page>

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date of the last signature set forth below.

**For Global Tel\*Link Corporation**

**For Receiving Party:**

Name:

Name:

Title:

Title:

Date:

Date:

## **EXHIBIT 2**

Global Tel Link Corporation's Revised Non-Disclosure and Use of Information Agreement,  
dated February 26, 2021

## NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT

This Non-Disclosure and Use of Information Agreement (the “**Agreement**”), dated as of \_\_\_\_, 2021, is by and between **Global Tel\*Link Corporation**, an Idaho Corporation, on its own behalf and on behalf of all entities controlling, under common control with or controlled by it (“**GTL**”), and **Prison Policy Initiative, Inc.**, a Massachusetts corporation (the “**Receiving Party**”) (each a “**Party**” and collectively herein referred to as the “**Parties**”)

### RECITALS

WHEREAS, the Parties desire to enter into an agreement governing access to and the use of all Confidential Information, as hereinafter defined, in California Public Utilities Commission (“**CPUC**”) Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People* (the “**Proceeding**”), pursuant to the Receiving Party’s request for production, exchange and discovery of such Confidential Information; and

WHEREAS, the Receiving Party commits to protect, use, handle, and safeguard the Confidential Information it receives from GTL in accordance with the duties and responsibilities set forth herein, exercising the same degree of care as it would in protecting, using, handling, and safeguarding its own Confidential Information, but in no less than reasonable care.

### DEFINITIONS

“**Agreement**” as used herein means an arrangement between the Parties, a properly executed and legally binding contract. This Agreement shall not constitute, create or otherwise imply a joint venture, teaming or pooling agreement, partnership, or business combination or relationship of any kind. This Agreement is not intended to create any right in or obligation of any party or third party other than those expressly stated herein.

“**Confidential Information**” as used herein means proprietary or confidential information, intellectual property, trade secrets, know-how, software, technology, specifications, and non-public business or financial information, including information and materials concerning contractual negotiations, formation, and execution; vendor, customer, and employee data; any written materials marked as confidential or, in the case of oral communications, identified as confidential by oral declaration; and any other documents, information, or data that reasonably should be understood to be confidential. Confidential Information also means any information, documents, or data that has been accorded confidential treatment in other regulatory proceedings; any third party’s information, documents, or data provided to GTL under obligation of confidentiality; and any information, documents, or data disclosed to a third party by GTL under obligation of confidentiality.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the Parties agree as follows:

1. **Purpose and Scope.** The purpose of this Agreement is to permit the Receiving Party to obtain and review Confidential Information solely in connection with the evidentiary discovery process set forth under CPUC Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People*. Nothing in this Agreement will or shall be construed to broaden GTL's responsibilities with respect to that process or limit its rights thereunder, including, without limitation, GTL's rights to object to information, document, or data requests propounded by the Receiving Party in accordance with applicable laws, regulations, and procedural rules, and GTL's ability to seek enforcement or redress of such rights before a court or tribunal of competent jurisdiction.
2. **Non-Disclosure.** The Receiving Party acknowledges and agrees to protect, use, handle, and safeguard the Confidential Information it receives from GTL in accordance with the duties and responsibilities set forth herein, exercising the same degree of care as it would in protecting, using, handling, and safeguarding its own Confidential Information, but no less than reasonable care, and at all times keep confidential the Confidential Information. The Receiving Party acknowledges and agrees that it shall use the Confidential Information only as required or permitted under this Agreement and, subject to Section 4 of this Agreement, will not disclose the Confidential Information, or permit anyone else to disclose it, except to those employees, affiliates, accountants, attorneys, and consultants who have a need to know; provided, that prior to disclosing the Confidential Information to any such employee, affiliate, accountant, attorney, or consultant of the terms and conditions of this Agreement, the Receiving Party will (i) inform them of the terms and conditions of this Agreement, and (ii) obtain their agreement to be bound by them.
3. **Ownership of Confidential Information.** All Confidential Information disclosed by GTL to the Receiving Party pursuant to this Agreement is and shall remain the exclusive property of GTL. Nothing in this Agreement will or shall be construed to grant the Receiving Party ownership of, a license for, or any other right to use the Confidential Information, except as expressly stated in this Agreement, and nothing in this Agreement will or shall be construed to operate as a waiver of GTL's rights in the Confidential Information.
4. **Exceptions to Non-Disclosure.** Confidential Information may be disclosed by the Receiving Party to a third party to the extent that such information:
  - (a) is or was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement, but only from the date that it becomes available to the general public; or
  - (b) was known by the Receiving Party at the time of disclosure without restrictions on its use, or was independently developed by the Receiving Party without reliance on, use of, or guidance derived from the Confidential Information,

each as shown by adequate documentation; or

- (c) subject to the provisions of Section 6, is used or disclosed pursuant to a statutory duty or an order, subpoena or other lawful process issued by a court, regulatory agency, or other governmental authority of competent jurisdiction under its independent authority; or
- (d) subject to the provisions of Section 5, is disclosed to the Administrative Law Judge assigned to this Proceeding (the “**Assigned ALJ**”).

**5. Procedure for Using Confidential Information.** If the Receiving Party intends to submit documents that reflect or contain or use any Confidential Information in connection with the Proceeding in such a way that would result in a public disclosure of Confidential Information, including without limitation, the presentation of prepared testimony, cross-examination, briefs, comments, motions, or other filings or presentations before the CPUC, the Receiving Party shall submit such documents in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Agreement. Such documents shall be marked “CONFIDENTIAL INFORMATION” and shall be filed under seal and served under seal upon the Assigned ALJ. Nothing in this Agreement shall be construed as precluding either Party from objecting to the use of the Confidential Information on any legal grounds, including any appeal of a decision by the Assigned ALJ under the California Public Utilities Commission Rules of Practice and Procedure.

**6. Notice of Pending Third-Party Disclosure.** If a court, regulatory agency, or other governmental authority of competent jurisdiction issues an order or subpoena under its independent authority for Confidential Information to the Receiving Party, or otherwise requests or requires under its independent authority the disclosure of Confidential Information by the Receiving Party (a “**Demand**”), the Receiving Party shall notify GTL of the Demand as soon as practicable, so as to facilitate GTL’s efforts to prevent such disclosure or otherwise preserve the confidentiality of the Confidential Information. A Party shall not be in violation of this Agreement if it complies with a Demand pursuant to this Section 6.

**7. Obligation of the Receiving Party with Respect to Existing Protective Orders.** With respect to a production request by the Receiving Party for information, documents, or data that constitute Stamped Confidential Documents or Confidential Information under the Protective Order issued by the Federal Communications Commission (the “**FCC**”) on December 19, 2013, in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services* (the “**FCC Protective Order**”), as those terms are defined therein, the Parties acknowledge and agree that no such information, documents, or data shall be produced under such request (i) unless the Receiving Party complies with the Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information set forth by the FCC Protective Order, including the execution and filing with the FCC’s Wireline Competition Bureau of the Acknowledgement of Confidentiality appended thereto, and (ii) until the FCC resolves objections, if any, arising from the Receiving Party’s compliance with the FCC Protective Order’s Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information, as detailed therein.

**8. Term.** This Agreement shall become effective on the date it is fully executed and

shall continue in effect for 30 days after a final and unappealable order terminating the Proceeding unless either Party unilaterally terminates this Agreement by providing thirty (30) days written notice to the other Party of an early termination. Termination shall not extinguish any claim, liability, or cause of action under this Agreement existing at the time of termination, including the rights and obligations set forth under Section 9, below. Termination shall not extinguish any claim, liability, or cause of action under this Agreement existing at the time of termination, including the rights and obligations set forth under Section 9, below. Termination shall not abrogate the Receiving Party's obligations hereunder for Confidential Information received prior to the date of termination. The confidentiality and non-disclosure obligations of this Agreement are perpetual and survive expiration or termination of this Agreement.

**9. Return or Destruction of Confidential Information.** Upon termination of this Agreement, all Confidential Information shall, at GTL's election, be returned to GTL or destroyed by the Receiving Party.

**10. Injunctive Relief.** The Parties acknowledge and agree that because (i) an award of money damages is inadequate for any breach of this Agreement, and (ii) any breach causes GTL irreparable harm, for any violation or threatened violation of any provision of this Agreement, in addition to any remedy GTL may have at law, GTL is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages. Each Party acknowledges agrees that it shall bear all costs and expenses, including reasonable attorneys' fees that may be incurred by the other Party, pursuant to this Section 10.

**11. Authority.** The Parties agree that this Agreement binds the Receiving Party and each of its employees, agents, representatives, or any other individual who may have access to the Confidential Information. The Parties acknowledge that the individual signing on behalf of such Party has the authority to bind such Party as set forth in this Agreement.

**12. No Warranties or Representations.** Any Confidential Information disclosed under this Agreement carries no warranty or representation of any kind, either express or implied. The Receiving Party shall not use or rely upon the Confidential Information for any purpose other than to make its own evaluation thereof pursuant to the evidentiary discovery process set forth in the Proceeding.

**13. Notice.** Unless changed by a subsequent notice, all notices permitted or required under this Agreement shall be in writing and shall be delivered to the locations listed below: (i) in person, (ii) mailed via certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, or (iii) by email, provided that the Party receiving notice confirms actual receipt. Notice sent by mail shall be deemed delivered the date shown on the delivery receipt to the other Party at the following addresses:

If to GTL:

Chérie R. Kiser  
Matthew L. Conaty  
CAHILL GORDON & REINDEL LLP  
1990 K Street, N.W. Suite 950  
Washington, DC 20006

[ckiser@cahill.com](mailto:ckiser@cahill.com)  
[mconaty@cahill.com](mailto:mconaty@cahill.com)

If to Receiving Party: Ginger Jackson-Gleich  
Prison Policy Initiative  
69 Garfield Ave., Floor 1  
Easthampton, MA 01027  
[gjacksongleich@prisonpolicy.org](mailto:gjacksongleich@prisonpolicy.org)

14. **Miscellaneous.**

- (a) **Assignment.** This Agreement shall be binding upon the Parties, their successors, and assigns. Neither Party may assign this Agreement without the other Party's prior written consent.
- (b) **Governing Law.** The laws of the state of California, excluding its conflicts of law rules that would cause the application of the laws of another state, govern this Agreement.
- (c) **Waiver of Jury Trial.** Both GTL and the Receiving Party hereby waive their right to trial by jury in connection with any dispute related to this Agreement.
- (d) **Non-Waiver of Rights.** Any waiver of the provisions of this Agreement by a Party or its rights or remedies under this Agreement must be in writing. Any failure or delay in exercising any right under this Agreement shall not constitute a waiver of that right. Any waiver is solely for the circumstances giving rise to it and does not constitute a waiver for future situations.
- (e) **Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then each provision not so affected will be enforced to the extent permitted by law.
- (f) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior proposals, agreements, negotiations, correspondence and all other communications, whether written or oral, between GTL and the Receiving Party. No amendment or modification of any provision hereof shall be effective unless made in writing and signed by both GTL and the Receiving Party.
- (g) **Titles and Headings.** The topical headings of the sections and subsections contained in this Agreement are for convenience only and do not define, limit or construe the contents thereof or this Agreement.
- (h) **Counterparts, Facsimile.** This Agreement may be executed in counterparts, each of which may be delivered by facsimile and all of which shall be considered one and the same Agreement. A facsimile copy of the executed



signature page shall have the same legal effect as an original.

<Signatures on following page>

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date of the last signature set forth below.

**For Global Tel\*Link Corporation**

**For Receiving Party:**

Name:

Name:

Title:

Title:

Date:

Date:

### **EXHIBIT 3**

Non-Disclosure and Use of Information Agreement between Global Tel\*Link Corporation and  
Prison Policy Initiative, Inc., executed March 3, 2021

## NON-DISCLOSURE AND USE OF INFORMATION AGREEMENT

This Non-Disclosure and Use of Information Agreement (the “**Agreement**”), dated as of March 1, 2021, is by and between **Global Tel\*Link Corporation**, an Idaho corporation, on its own behalf and on behalf of all entities controlling, under common control with or controlled by it (“**GTL**”), and **Prison Policy Initiative, Inc.**, a Massachusetts corporation (the “**Receiving Party**”) (each a “**Party**” and collectively herein referred to as the “**Parties**”).

### RECITALS

WHEREAS, the Parties desire to enter into an agreement governing access to and the use of all Confidential Information, as hereinafter defined, in California Public Utilities Commission (“**CPUC**”) Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People* (the “**Proceeding**”), pursuant to the Receiving Party’s request for production, exchange and discovery of such Confidential Information; and

WHEREAS, the Receiving Party commits to protect, use, handle, and safeguard the Confidential Information it receives from GTL in accordance with the duties and responsibilities set forth herein, exercising the same degree of care as it would in protecting, using, handling, and safeguarding its own Confidential Information, but in no less than reasonable care.

### DEFINITIONS

“**Agreement**” as used herein means an arrangement between the Parties, a properly executed and legally binding contract. This Agreement shall not constitute, create or otherwise imply a joint venture, teaming or pooling agreement, partnership, or business combination or relationship of any kind. This Agreement is not intended to create any right in or obligation of any party or third party other than those expressly stated herein.

“**Confidential Information**” as used herein means proprietary or confidential information, intellectual property, trade secrets, know-how, software, technology, specifications, and non-public business or financial information, including information and materials concerning contractual negotiations, formation, and execution; vendor, customer, and employee data; any written materials marked as confidential or, in the case of oral communications, identified as confidential by oral declaration; and any other documents, information, or data that reasonably should be understood to be confidential. Confidential Information also means any information, documents, or data that has been accorded confidential treatment in other regulatory proceedings; any third party’s information, documents, or data provided to GTL under obligation of confidentiality; and any information, documents, or data disclosed to a third party by GTL under obligation of confidentiality.

## AGREEMENT

NOW, THEREFORE, for valuable consideration, the Parties agree as follows:

1. **Purpose and Scope.** The purpose of this Agreement is to permit the Receiving Party to obtain and review Confidential Information solely in connection with the evidentiary discovery process set forth under CPUC Proceeding R.20-10-002, *Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People*. Nothing in this Agreement will or shall be construed to broaden GTL's responsibilities with respect to that process or limit its rights thereunder, including, without limitation, GTL's rights to object to information, document, or data requests propounded by the Receiving Party in accordance with applicable laws, regulations, and procedural rules, and GTL's ability to seek enforcement or redress of such rights before a court or tribunal of competent jurisdiction.
2. **Non-Disclosure.** The Receiving Party acknowledges and agrees to protect, use, handle, and safeguard the Confidential Information it receives from GTL in accordance with the duties and responsibilities set forth herein, exercising the same degree of care as it would in protecting, using, handling, and safeguarding its own Confidential Information, but no less than reasonable care, and at all times keep confidential the Confidential Information. The Receiving Party acknowledges and agrees that it shall use the Confidential Information only as required or permitted under this Agreement and, subject to Section 4 of this Agreement, will not disclose the Confidential Information, or permit anyone else to disclose it, except to those employees, affiliates, accountants, attorneys, and consultants who have a need to know; provided, that prior to disclosing the Confidential Information to any such employee, affiliate, accountant, attorney, or consultant of the terms and conditions of this Agreement, the Receiving Party will (i) inform them of the terms and conditions of this Agreement, and (ii) obtain their agreement to be bound by them.
3. **Ownership of Confidential Information.** All Confidential Information disclosed by GTL to the Receiving Party pursuant to this Agreement is and shall remain the exclusive property of GTL. Nothing in this Agreement will or shall be construed to grant the Receiving Party ownership of, a license for, or any other right to use the Confidential Information, except as expressly stated in this Agreement, and nothing in this Agreement will or shall be construed to operate as a waiver of GTL's rights in the Confidential Information.
4. **Exceptions to Non-Disclosure.** Confidential Information may be disclosed by the Receiving Party to a third party to the extent that such information:
  - (a) is or was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement, but only from the date that it becomes available to the general public; or
  - (b) was known by the Receiving Party at the time of disclosure without restrictions on its use, or was independently developed by the Receiving Party without reliance on, use of, or guidance derived from the Confidential Information,

each as shown by adequate documentation; or

- (c) subject to the provisions of Section 6, is used or disclosed pursuant to a statutory duty or an order, subpoena or other lawful process issued by a court, regulatory agency, or other governmental authority of competent jurisdiction under its independent authority; or
- (d) subject to the provisions of Section 5, is disclosed to the Administrative Law Judge assigned to this Proceeding (the “Assigned ALJ”).

**5. Procedure for Using Confidential Information.** If the Receiving Party intends to submit documents that reflect or contain or use any Confidential Information in connection with the Proceeding in such a way that would result in a public disclosure of Confidential Information, including without limitation, the presentation of prepared testimony, cross-examination, briefs, comments, motions, or other filings or presentations before the CPUC, the Receiving Party shall notify GTL as soon as possible and the Parties shall constructively explore means of identifying and handling the Confidential Information such that GTL’s proprietary interest therein may be reasonably protected. To the extent that the parties are unable to agree on a procedure, the Receiving Party may submit relevant Confidential Information to the Assigned ALJ under seal in a manner that complies with Rule 11.4 of the CPUC’s Rules of Procedure, as well as any other applicable CPUC procedures governing the filing of confidential information under seal. Nothing in this Agreement shall be construed as precluding either Party from objecting to the use of the Confidential Information on any legal grounds, including any appeal of a decision by the Assigned ALJ under the California Public Utilities Commission Rules of Practice and Procedure.

**6. Notice of Pending Third-Party Disclosure.** If a court, regulatory agency, or other governmental authority of competent jurisdiction issues an order or subpoena under its independent authority for Confidential Information to the Receiving Party, or otherwise requests or requires under its independent authority the disclosure of Confidential Information by the Receiving Party (a “Demand”), the Receiving Party shall notify GTL of the Demand as soon as practicable, so as to facilitate GTL’s efforts to prevent such disclosure or otherwise preserve the confidentiality of the Confidential Information. A Party shall not be in violation of this Agreement if it complies with a Demand pursuant to this Section 6.

**7. Obligation of the Receiving Party with Respect to Existing Protective Orders.** With respect to a production request by the Receiving Party for information, documents, or data that constitute Stamped Confidential Documents or Confidential Information under the Protective Order issued by the Federal Communications Commission (the “FCC”) on December 19, 2013, in WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services* (the “FCC Protective Order”), as those terms are defined therein, the Parties acknowledge and agree that no such information, documents, or data shall be produced under such request (i) unless the Receiving Party complies with the Procedure for Obtaining Access to Stamped Confidential Documents and Confidential Information set forth by the FCC Protective Order, including the execution and filing with the FCC’s Wireline Competition Bureau of the Acknowledgement of Confidentiality appended thereto, and (ii) until the FCC resolves objections, if any, arising from the Receiving Party’s compliance with the FCC Protective Order’s Procedure for Obtaining Access to Stamped Confidential Documents and

Confidential Information, as detailed therein.

8. **Term.** This Agreement shall become effective on the date it is fully executed and shall continue in effect for 30 days after a final and unappealable order terminating the Proceeding unless either Party unilaterally terminates this Agreement by providing thirty (30) days written notice to the other Party of an early termination. Termination shall not extinguish any claim, liability, or cause of action under this Agreement existing at the time of termination, including the rights and obligations set forth under Section 9, below. Termination shall not extinguish any claim, liability, or cause of action under this Agreement existing at the time of termination, including the rights and obligations set forth under Section 9, below. Termination shall not abrogate the Receiving Party's obligations hereunder for Confidential Information received prior to the date of termination. The confidentiality and non-disclosure obligations of this Agreement are perpetual and survive expiration or termination of this Agreement.

9. **Return or Destruction of Confidential Information.** Upon termination of this Agreement, all Confidential Information shall, at GTL's election, be returned to GTL or destroyed by the Receiving Party.

10. **Injunctive Relief.** The Parties acknowledge and agree that because (i) an award of money damages is inadequate for any breach of this Agreement, and (ii) any breach causes GTL irreparable harm, for any violation or threatened violation of any provision of this Agreement, in addition to any remedy GTL may have at law, GTL is entitled to equitable relief, including injunctive relief and specific performance, without proof of actual damages. Each Party acknowledges agrees that it shall bear all costs and expenses, including reasonable attorneys' fees that may be incurred by the other Party, pursuant to this Section 10.

11. **Authority.** The Parties agree that this Agreement binds the Receiving Party and each of its employees, agents, representatives, or any other individual who may have access to the Confidential Information. The Parties acknowledge that the individual signing on behalf of such Party has the authority to bind such Party as set forth in this Agreement.

12. **No Warranties or Representations.** Any Confidential Information disclosed under this Agreement carries no warranty or representation of any kind, either express or implied. The Receiving Party shall not use or rely upon the Confidential Information for any purpose other than to make its own evaluation thereof pursuant to the evidentiary discovery process set forth in the Proceeding.

13. **Notice.** Unless changed by a subsequent notice, all notices permitted or required under this Agreement shall be in writing and shall be delivered to the locations listed below: (i) in person, (ii) mailed via certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, or (iii) by email, provided that the Party receiving notice confirms actual receipt. Notice sent by mail shall be deemed delivered the date shown on the delivery receipt to the other Party at the following addresses:

If to GTL:

Chérie R. Kiser  
Matthew L. Conaty

CAHILL GORDON & REINDEL LLP  
1990 K Street, N.W. Suite 950  
Washington, DC 20006  
[ckiser@cahill.com](mailto:ckiser@cahill.com)  
[mconaty@cahill.com](mailto:mconaty@cahill.com)

If to Receiving Party: Ginger Jackson-Gleich  
Prison Policy Initiative  
69 Garfield Ave., Floor 1  
Easthampton, MA 01027  
[gjacksongleich@prisonpolicy.org](mailto:gjacksongleich@prisonpolicy.org)

14. **Miscellaneous.**

- (a) **Assignment.** This Agreement shall be binding upon the Parties, their successors, and assigns. Neither Party may assign this Agreement without the other Party's prior written consent.
- (b) **Governing Law.** The laws of the state of California, excluding its conflicts of law rules that would cause the application of the laws of another state, govern this Agreement.
- (c) **Waiver of Jury Trial.** Both GTL and the Receiving Party hereby waive their right to trial by jury in connection with any dispute related to this Agreement.
- (d) **Non-Waiver of Rights.** Any waiver of the provisions of this Agreement by a Party or its rights or remedies under this Agreement must be in writing. Any failure or delay in exercising any right under this Agreement shall not constitute a waiver of that right. Any waiver is solely for the circumstances giving rise to it and does not constitute a waiver for future situations.
- (e) **Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then each provision not so affected will be enforced to the extent permitted by law.
- (f) **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes all prior proposals, agreements, negotiations, correspondence and all other communications, whether written or oral, between GTL and the Receiving Party. No amendment or modification of any provision hereof shall be effective unless made in writing and signed by both GTL and the Receiving Party.
- (g) **Titles and Headings.** The topical headings of the sections and subsections contained in this Agreement are for convenience only and do not define, limit or construe the contents thereof or this Agreement.



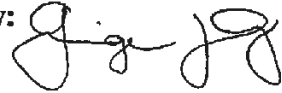
- (h) **Counterparts, Facsimile.** This Agreement may be executed in counterparts, each of which may be delivered by facsimile and all of which shall be considered one and the same Agreement. A facsimile copy of the executed signature page shall have the same legal effect as an original.

<Signatures on following page>

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date of the last signature set forth below.

**For Global Tel\*Link Corporation**

**For Receiving Party:**



Name:

Name:

Title:

Title:

Date:

Date:

Ginger Jackson-Gleich

Policy Council

March 2, 2021

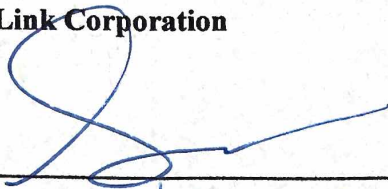
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date of the last signature set forth below.

**For Global Tel\*Link Corporation**

Name:

Title:

Date:

  
\_\_\_\_\_  
General Counsel  
\_\_\_\_\_  
3-3-2021  
\_\_\_\_\_

**For Receiving Party:**

Name:

Title:

Date:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_